

Approving Sale of Keigley Quarry Property Pursuant to Bankruptcy Code Sections 363(b), (f) and (m) and 105(a) and Federal rules of Bankruptcy Procedure 2002, 6004, and 9014 Combined with Notice of Hearing and Notice of Sale" (the Motion).

The Keigley Quarry Property in Utah County, Utah is described more particularly in the Motion (the Property). The Debtor in Possession operates approximately 400 acres of the Property as a mining operation (the Mine). The Debtor in Possession freely acknowledges, and does not contest, the regulatory jurisdiction asserted over the Mine by the Mining Agency. The Mining Agency's environmental regulatory requirements applicable to the Mine are set forth in the Utah Mined Land Reclamation Act at Utah Code Ann. § 40-8-1 et seq. (1953, as amended), and the implementing agency rules in the Utah Administrative Code at R647 et seq. (the Utah Minerals Program).

Pre-petition, the Debtor posted a reclamation surety bond with the Mining Agency in the amount of \$615,500.00 (the Bond). A copy of the Bond is attached to the Proof of Claim filed by the Mining Agency in this proceeding, and is hereby incorporated by this reference. The Debtor in Possession has kept the Bond in place post-petition.

Under the terms of the Utah Minerals Program, the Debtor in Possession is obligated at the conclusion of mining operations to reclaim the Mine consistent with the requirements of the Utah Minerals Program (the Reclamation Duty). If the Debtor in Possession, as operator of the Mine, fails to reclaim the Property as required by law, then the Mining Agency is entitled to forfeit the Bond and use the proceeds to reclaim the site with the use of the Bond proceeds.

Based on the information provided in the Motion, it is obvious that Oldcastle, Inc., a Delaware corporation (the Purchaser) has assumed certain specified contractual obligations related to the Mine reclamation bonding requirements under the Utah Minerals Program. See Paragraph 3(o) at Page 9 of the Motion and Paragraph 7 at Page 5 of the September 9, 1999 Letter Agreement attached as Exhibit 1 to the Motion. Still, as of September 28, 1999, the undersigned counsel understands that the Division still has not received any direct communications with the Purchaser regarding this proposed transfer of the Mine.

Of course, until such time as the Division has received and reviewed the appropriate filings required under the Utah Minerals Program, the Division can express no opinion as to the proposed transfer of the Mine to the Purchaser, as to a new bond, or as to release of the existing Bond. Moreover, the Motion makes clear that (a) the successful Purchaser, if any, could be a different unspecified person or entity from Oldcastle and (b) the Debtor in Possession and the Purchaser may enter into a separate Definitive Agreement, which the Mining Agency has not seen.¹ Under these *very* fluid circumstances, the Mining Agency respectfully ask that the U.S. Bankruptcy Court not approve the proposed sale without conditioning the sale to protect the legitimate State environmental regulatory interests at the Mine asserted by the Mining Agency.

¹As required by Page 3 of the Motion, the undersigned counsel for the Mining Agency hereby expressly requests that counsel for the Debtor in Possession mail to Mining Agency counsel a copy of the Definitive Agreement, if any.

The Mining Agency does not want to block the sale. Rather, the Mining Agency wants to make sure the Court and the parties in interest all understand that the Mining Agency will not and cannot release the \$615,500.00 Bond applicable to the Mine unless and until the successful Purchaser is duly approved by the Division as the new operator of the Mine. For a new company to be approved by the Division as a new acceptable operator of the Mine, the new operator must be able to comply with all requirements of the Utah Minerals Program, to assume the entire Reclamation Duty and to post a satisfactory new Bond. In other words, any court-approved sale of the Mine free and clear of liens and interests should not be construed as a sale free and clear of the requirements of the Utah Minerals Program applicable to that land.

The proposed conditions to closing are as set forth in Paragraph 3(m) & (n) on Pages 7 & 8 of the Motion. See also Paragraph 15, Page 8 of the Letter Agreement. As proposed, the Letter Agreement is made subject to approval of many contingencies beyond approval of the Bankruptcy Court. Not only is the deal subject to higher and better offers, the deal is also subject to "the required consent of Congress Financial Corporation." Id. The deal is also subject to approval by the Board of Directors of the Purchaser's parent, CRH plc. The deal is also subject to the Purchaser receiving a certain Option Agreement and certain other documents.

The parties did not make closing of this proposed transaction involving the transfer of this regulated Mine subject to the prior approval of the Division, but they should have. The Division urges the court to exercise the court's inherent powers under 11 U.S.C. §

105(a)² and/or 363(e)³ to correct this error by making prior approval by the Division a condition precedent to closing. The Mining Agency respectfully requests that the Court only approve the sale of the portion of the Property defined as the Mine subject to the reasonable condition that the deal cannot close unless and until the Purchaser first fully satisfies Paragraph 7 on Page 5 of the Letter Agreement, which states:

Oldcastle shall replace the existing reclamation contract and surety bond for the Property with the Utah Division of Oil, Gas & Mining ("DOGM") and obtain a complete release of the reclamation or other obligations to DOGM by Geneva or its predecessors for the Property. Oldcastle shall be solely responsible to enter into and/or post all other bonds and/or enter into any other agreements with DOGM or any other government body required by law for the use or reclamation of the Property.

Id. Also, since applicable nonbankruptcy law does not permit the sale of the Mine free of the regulatory interests asserted by the Division, the Court should confirm that the judicial sale of the Mine is not in derogation of the continuing right by the Mining Agency (and its agents, contractors and representatives) to enter the Mine to inspect and/or reclaim the Mine as may be otherwise appropriate under applicable State law for the Utah Minerals Program.

The proper protection of the lawful regulatory interests of the Mining Agency at this 400 acre Mine may not hang on the slender thread of an executory contractual duty

²11 U.S.C. 105(a) states in pertinent part: "The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title...."

³11 U.S.C. § 363(e) states in pertinent part: "Notwithstanding any other provision of this section, at any time, on request of an entity that has an interest in property used, sold, or leased, or proposed to be used, sold, or leased, by the trustee, the court, with or without a hearing, shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection to such interest...."

assumed by the Purchaser. If the successful Purchaser is a responsible mining company who is qualified and able to operate the Mine, there is no reason to believe that the normal regulatory approvals cannot be forthcoming from the Division with reasonable dispatch. On the other hand, if the Division is not able under applicable law to approve the transfer of the Mine to a given proposed Purchaser, then the proposed sale free and clear of all liens and interests would be improper given the current un-reclaimed status of the Mine.

Finally, as an advance courtesy scheduling note to the Court, the undersigned counsel of record needs to be out of town on another matter on the noticed date of the hearing (October 14, 1999 at 3 p.m.). However, Assistant Utah Attorney General Stephen Lewis (whose address and telephone number are shown on the attached Certificate of Service), or his designee, will appear on behalf of the Division at that hearing.

DATED this 30th day of September, 1999.

Office of the Honorable Jan Graham
Attorney General of Utah
Patrick J. O'Hara
Assistant Attorney General

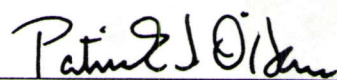
By Patrick J. O'Hara
Attorney for the Utah Division of Oil, Gas & Mining
Office of the Utah Attorney General
160 East 300 South, 5th Floor
P.O. Box #140857
Salt Lake City, Utah 84114-0857
Telephone: 801-366-0508

CERTIFICATE OF SERVICE

I hereby certify I caused to be mailed by United States Mail, postage prepaid, on this 30th day of September, 1999 a true and correct copy of the foregoing "REQUEST FOR CONDITIONS BY THE UTAH DIVISION OF OIL, GAS & MINING CONCERNING DEBTOR'S MOTION FOR AN ORDER TO SELL THE KIEGELY QUARRY IN UTAH COUNTY, to the following:

Ralph R. Mabey, Esq. Steven J. McCardell, Esq. Kenneth L. Canon II, Esq. LeBouef, Lamb, Greene & MacRae Attorneys for Chapter 7 Trustee Kenneth Rushton 1000 South Main Street Salt Lake City, Utah 84101	Bruce R. Zirinsky Mark C. Ellenberg Cadwalader, Wickersham & Taft 1333 New Hampshire Ave., N.W. Washington, DC 20036 and 100 Maiden Lane New York, NY 10038
J. Thomas Beckett Parsons, Behle & Latimer 201 So. Main St. #1800 Salt Lake City, UT 84111	Stephen E. Garcia Hopkins & Sutter Three First National Plaza Chicago, IL 60602
Weston L. Harris, Esq. Ray, Quinney & Nebeker 79 South Main St. #500 P.O. Box 45385 Salt Lake City, UT 84145-0385	Peter J. Kuhn, Esq. Office of the U.S. Trustee 9 Exchange Place, #100 Salt Lake City, UT 84111
James P. Ricciardi, Esq. Steven R. Shoemate, Esq. Joshua F. Cender, Esq. Gibson, Dunn & Crutcher 200 Park Ave. New York, NY 10166-0193	United States Attorney's Office 185 So. State Street #400 Salt Lake City, UT 84111
State of Utah Dep't of Commerce Div. of Corp. & Comm. Code 160 East 300 So., 2 nd Fl. Salt Lake City, UT 84111	Office of the Lt. Governor 210 State Capitol Salt Lake City, UT 84114
Utah County Assessor 100 East Center St., #1100 Provo, UT 84606	Utah County Attorney 100 East Center St., #2100 Provo, UT 84601

Congress Financial Corp. 1133 Avenue of the Americas New York, NY 10036	Corporate Trust Agency Group Bankers Trust Co., Indenture Trustee Four Albany Street New York, NY 10006
US Steel P.O. Box 371505M Pittsburg, PA 15251	S&P America Inc. PO. Box 7780-4024 Philadelphia, PA 19182-4024
Shieldalloy Metallurgical Corp. P.O. Box 310 Cambridge, OH 43725-0310	Voest-Alpine Service & Technology 60 East 42 nd St. New York, NY 10165
North American Refractories P.O. Box 7247-8741 Philadelphia, PA 19170-8741	Remacor P.O. Box 400157 Pittsburgh, PA 15268-0157
Hewlett-Packard P.O. Box 92013 Chicago, IL 60675-2013	Finova Capital corp. 115 West Century Road, 3 rd Fl. Paramus, NJ 07652
ITT Commercial Finance corp. 445 Minnesota St. St. Paul, MN 55101	US Aggregates George E. Butler, Esq. 201 Peachtree Circle Atlanta, GA 30309-3206
Anna W. Drake, Esq. 215 So. State St., Suite 900 Salt Lake City, UT 84111	Oldcastle, Inc. Attn: S. Val Staker 100 West Center St. North Salt Lake City, UT 84054
Brown Minneapolis Tank Allan R. Popper P.O. Box 64670 St. Paul, MN 55106	Stephen Lewis, Esq. Assistant Attorney General Attorney for the Utah Div. of Oil, Gas & Mining Office of the Utah Attorney General 160 East 300 South, 5 th Floor P.O. Box #140857 Salt Lake City, Utah 84114-0857 Tel. 801-366-0371



Patrick J. O'Hara